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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45607**
Plaintiff-Respondent,	)	
	)	**Minidoka County Case No.**
v.	)	**CR-2016-2231**
	)	
DARRYL JOE ALBERTSON,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

HONORABLE JONATHAN P. BRODY
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Darryl Joe Albertson appeals from the Judgment of Conviction and Order entered by the district court after Albertson entered a conditional Alford[1] plea to possession of a controlled substance, methamphetamine. Albertson argues on appeal that the district court erred when it denied his motion to suppress.

Statement Of The Facts And Course Of The Proceedings

On August 10, 2016, detectives at the Cassia County Sheriff's Office received a telephone call from Rangen's Fertilizer Feed Store. (Tr., p.36, Ls.8-18.[2]) The store expressed some concern that Darryl Joe Albertson had purchased an unusually large amount of sulfur, a common ingredient in homemade bombs. (Tr., p.36, L.8 – p.37, L.1.) Captain Kindig from the Minidoka County Sheriff's Office, who worked on the "Mini-Cassia Drug Task Force," was in the Cassia County Sheriff's Office when the call came in. (Tr., p.33, Ls.10-19; p.36, Ls.8-18.) Captain Kindig knew Albertson and volunteered to go speak with him. (Tr., p.36, Ls.8-18.)

Captain Kindig pulled into Albertson's driveway, which is "kind of an open area." (Tr., p.37, L.20 – p.38, L.14; see Defense Exhibit C.) He got out of his car and walked up the steps to Albertson's porch at the main entrance of the trailer. (Tr., p.38, Ls.15-18; p.40, Ls.10-12.) At no point did Captain Kindig have to go past, over, around, or through any fences or other obstacles. (Tr., p.38, Ls.12-20.)

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[1] North Carolina v. Alford, 400 U.S. 25 (1970).

[2] All transcript citations refer to the transcript of the hearing on the motion to suppress held on January 30, 2017.

Once Captain Kindig was on Albertson's porch, he could see through the front window of Albertson's home. (Tr., p.39, L.22 – p.40, L.3.) As he approached Albertson's front door, he saw Albertson through the window "working over a methamphetamine pipe." (Id.) Captain Kindig knocked on the door, and Albertson answered. (Tr., p.51, Ls.20-24.) Captain Kindig and Albertson had a conversation in which Albertson insisted he could legally use the methamphetamine on his own property. (Tr., p.51, L.25 – p.52, L.6.) Captain Kindig explained "that that's not the case and that he'd be placed under arrest for possession of methamphetamine." (Tr., p.52, Ls.7-10.) Captain Kindig arrested Albertson. (Tr., p.52, Ls.14-15.)

Unbeknownst to Captain Kindig, Albertson had a No Trespassing sign on a power pole in the northwest corner of his property. (Tr., p.40, L.23 – p.41, L.3; p.53, Ls.7-10; p.55, Ls.13-16; R., p.51.) The power pole is "not in the driveway or in front of the driveway" but "sits off more towards [a] canal north of his property." (Tr., p.41, Ls.4-7; see Defense Exhibit A.) The No Trespassing sign itself is "black and faded out." (Tr., p.40, L.23 – p.41, L.3; see Defense Exhibit A.) "If you're close enough you can read it, but you've got to get pretty close to see those letters." (Tr., p.45, Ls.7-11; see Defense Exhibit B.)

The state charged Albertson with possession of a controlled substance, methamphetamine, and possession of drug paraphernalia. (R., pp.34-36.) Albertson moved "to suppress all evidence gathered by the State in this matter." (R., p.43.) He asserted that Captain Kindig had conducted an unreasonable search in violation of the Fourth Amendment by coming onto Alberton's property without Albertson's permission and despite the No Trespassing sign. (R., pp.43-44.)

The district court denied the motion to suppress. (R., pp.50-54.) The district court noted that officers, like the general public, have an implied license to approach a home, knock, and speak with the owner. (R., p.52.) The district court recognized that the implied license *can* be revoked but found that Albertson's sign, which it described as "not the most prominent or noticeable sign," was "insufficient to revoke the implied license." (R., pp.53-54.) "Therefore," the district court concluded, "Captain Kindig was in a location that he was legally allowed to be in when he observed the defendant smoking methamphetamine in the defendant's living room, and his view of the defendant smoking methamphetamine in the defendant's living room did not constitute a search under the Fourth Amendment." (R., p.54.)

Albertson entered an Alford plea to possession of a controlled substance, methamphetamine, on the condition that he could appeal the district court's denial of his motion to suppress. (R., pp.107-08.) The district court sentenced Albertson to a minimum of two years confinement with an additional three years indeterminate, suspended the sentence, and placed Albertson on probation for two years. (R., pp.116-17.) Albertson timely appealed. (R., pp.123-25.)

ISSUE

Albertson states the issue on appeal as:

> Whether the district court erred by denying Mr. Albertson's motion to suppress the evidence found as a result of the officer's observations while he was trespassing on Mr. Albertson's property.

(Appellant's brief, p.4.)

The state rephrases the issue as:

Has Albertson failed to show that the district court erred when it denied Albertson's motion to suppress on the basis that the officer who observed Albertson smoking methamphetamine from Albertson's front porch had an implied invitation to approach Albertson's front door, knock, and speak with Albertson?

ARGUMENT

Albertson Has Failed To Show The District Court Erroneously Denied His Motion To Suppress

A. Introduction

Captain Kindig did not conduct a search under the Fourth Amendment when he approached Albertson's front door and observed Albertson in open view smoking methamphetamine. "Under the open view doctrine, a police officer's observations made from a location open to the public do not constitute a search." State v. Christensen, 131 Idaho 143, 146, 953 P.2d 583, 586 (1998). Albertson's front porch was a location open to the public because there was an implied invitation for the public to use access routes to his house, including pathways to the entry, to approach his front door and knock.

Albertson erroneously argues that the open view doctrine does not apply because he had revoked the implied invitation for the public to use the access routes to his house. (Appellant's brief, pp.5-17.) Although the implied invitation can be revoked, revocation requires an unambiguous message to the public that visitors are not welcome such that a reasonably respectful citizen would understand that he or she should not proceed onto the property. The only possible indication on Albertson's property that visitors were not welcome was a single No Trespassing sign posted in the corner of the property on a power pole. The sign was black and faded out with letters that could only be seen from a close distance and was facing away from trees and a canal on the side of Albertson's property instead of away from the access route to Albertson's house. The district court properly found this lone, deteriorated No Trespassing sign was insufficient to revoke the implied invitation.

B. Standard Of Review

This Court reviews a district court's order resolving a motion to suppress "using a bifurcated standard of review." State v. Huffaker, 160 Idaho 400, 404, 374 P.3d 563, 567 (2016). "This Court accepts the trial court's findings of fact unless they are clearly erroneous, but may freely review the trial court's application of constitutional principles in light of those facts." Id.

C. Albertson Has Failed To Show The District Court Erred When It Found Captain Kindig Did Not Conduct A Search Under The Fourth Amendment

Captain Kindig did not violate the Fourth Amendment. The Fourth Amendment proscribes "unreasonable searches." U.S. Const. amend. IV. "Under the open view doctrine, a police officer's observations made from a location open to the public do not constitute a search." Christensen, 131 Idaho at 146, 953 P.2d at 586.

Captain Kindig observed Albertson smoking methamphetamine from a location open to the public—namely, Albertson's front porch. "There is an implied invitation for the public to use access routes to the house, such as parking areas, driveways, sidewalks, or pathways to the entry." State v. Clark, 124 Idaho 308, 313, 859 P.2d 344, 349 (Ct. App. 1993). "This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." Florida v. Jardines, 569 U.S. 1, 8 (2013). "Thus, a police officer not armed with a warrant may approach a home and knock, precisely because that is 'no more than any private citizen might do.'" Id. (quoting Kentucky v. King, 563 U.S. 452, 469 (2011)). Because Captain Kindig observed Albertson smoking methamphetamine from Albertson's front porch as he approached Albertson's front door to knock, his observation was made

from a location open to the public pursuant to the implied invitation and was therefore not a search under the open view doctrine. See Clark, 124 Idaho at 312, 859 P.2d at 348.

Albertson does not dispute that Captain Kindig could observe Albertson smoking methamphetamine in open view or that Captain Kindig made the observation from an access route to Albertson's house. Instead, he claims that the open view doctrine does not apply here because Albertson had revoked the implied invitation. (Appellant's brief, pp.5-10.) He is wrong.

The "implied invitation for the public to use normal access routes to a house . . . is not irrevocable." Christensen, 131 Idaho at 147, 953 P.2d at 587. But revocation requires an "unambiguous message" to the public that the implied license has been revoked such that "the reasonably respectful citizen" would "not proceed further." Id. Deciding whether the implied license has been revoked "requires a case by case determination" based on a "weighing of the facts." Christensen, 131 Idaho at 148, 953 P.2d at 588; see State v. Howard, 155 Idaho 666, 672, 315 P.3d 854, 860 (Ct. App. 2013).

In Christensen, in order for the officer to approach the defendant's home, he "had to step over or around a closed but unlocked gate on which was posted a 'no trespassing' sign." 131 Idaho at 145, 953 P.2d at 585. Because "[t]he no trespassing sign was clearly posted on a gate across the only public access to the property" it sent an "unambiguous message" that revoked the implied license. 131 Idaho at 147, 953 P.2d at 587.

In Howard, in order for the officers to approach the house, they had to use a private road and drive by "a small 'no trespassing' sign" on a fencepost located approximately one-half mile from the defendant's home. 155 Idaho at 668, 315 P.3d at 856. The Idaho Court of Appeals held the implied license had not been revoked. See 155 Idaho at 672,

315 P.3d at 860. The court reached its conclusion because the No Trespassing sign "was not clearly posted in that it was very small and not easily noticed" and "was not posted over or next to the entrance to the Road but instead it was attached to the second fencepost over." Id. The court observed that "the 'message' conveyed by the sign was ambiguous in that it could just as easily be interpreted to convey to the public to stay off the land behind the fence." Id.

If Christensen and Howard represent two ends of the implied-invitation spectrum, this case sits comfortably on the Howard end. Albertson's sign "was not clearly posted." Howard, 155 Idaho at 672, 315 P.3d at 860. Captain Kindig testified that the sign was "black and faded out" and that "you've got to get pretty close to see those letters." (Tr., p.40, L.23 – p.41, L.3; p.45, Ls.7-11.) The photographs of Albertson's property support his testimony: the photograph taken from across the street shows nothing but a black square on the power pole (see Defense Exhibit A), and even in the close-up photograph of the sign, it is so faded that only some of the words are legible (see Defense Exhibit B).

Even if a reasonably respectful citizen could read the No Trespassing sign, any "'message' conveyed by the sign was ambiguous." Howard, 155 Idaho at 672, 315 P.3d at 860. Unlike the No Trespassing sign in Christensen that was "on a gate across the only public access to the property," 131 Idaho at 147, 953 P.2d at 587, Albertson's sign was "on a pole on the corner of the property" (R., p.51; see Defense Exhibit A). Moreover, the sign did not face the public road—the logical direction for the sign to face if the intended message was to stay off of Albertson's property—but instead faced the open dirt area in front of Albertson's house. (See Exhibit B.) When standing in a position to try and read the faded sign (i.e., the position of the photographer who took the close-up photograph),

the sign is most reasonably read as a directive to stay out of the trees and away from the canal on the side of Albertson's property.[3] (Id.). The ambiguous message conveyed by the sign could not have revoked the implied invitation to use Albertson's front porch to approach his door and knock. See Howard, 155 Idaho at 672, 315 P.3d at 860 (holding no revocation because "the 'message' conveyed by the sign was ambiguous in that it could just as easily be interpreted to convey to the public to stay off of the land behind the fence").

Furthermore, Albertson had nothing else on his property suggesting the public should stay away. He had no fence. See Christensen, 131 Idaho at 147, 953 P.2d at 587 ("[T]he presence of a fence is a factor to consider in determining whether an area is open to the public."). He had no gate. See id. (relying, in part, on closed gate to find defendant revoked implied license). He had no barriers to entry at all, just an "[o]pen area." (Tr., p.38, Ls.12-20.) All that leaves Albertson is a difficult-to-read "black and faded out" No Trespassing sign (Tr., p.40, L.23 – p.41, L.3; p.45, Ls.7-11; see Defense Exhibit B), that sat "on a pole on the corner of the property" (R., p.51; see Defense Exhibit A), and faced away from the trees and canal on the side of Albertson's property rather than away from his house or access routes to his house (see Defense Exhibit B). That is insufficient to revoke the implied invitation because no "reasonably respectful citizen" approaching Albertson's front door would understand from the lone, deteriorated No Trespassing sign that he or she should "not proceed further." Christensen, 131 Idaho at 147, 953 P.2d at 587.

[3] Another possible message from the No Trespassing sign was to stay off of the power pole itself, which presumably did not belong to Albertson at all and on which Albertson could not legally post a No Trespassing sign without the utility company's express permission. See, e.g., I.C. § 18-7029.

Albertson suggests that he "revoked the implied invitation to enter his property by posting a *visible* 'No Trespassing' sign next to the entrance of his driveway." (Appellant's brief, p.6 (emphasis added).) That is an awfully generous description in light of the record. The No Trespassing sign was "visible" only in the sense that a visitor approaching Albertson's front door could see a black square that happened to be a No Trespassing sign on the power pole. (See Defense Exhibit A.) The words on the sign, which are all that matter,[4] are "faded out" such that "you've got to get pretty close to see those letters." (Tr., p.40, L.23 – p.41, L.3; p.45, Ls.7-11; see Defense Exhibit B; R., p.53 ("[I]t is not the most prominent or noticeable sign.").) Albertson has failed to explain how such a deteriorated sign could possibly communicate a revocation of the implied invitation to a reasonably respectful citizen—in fact, Albertson omitted the poor condition of the sign entirely from his opening brief.

Albertson relies on what he characterizes as "the district court's implicit finding that the sign was visible to the officer on the day in question." (Appellant's brief, p.9.) The district court made no such finding, implicitly or otherwise. The district court "*assume[d]* that the sign was there on the date of the search and that Captain Kindig could have seen it." (R., p.53 (emphasis added).) The need for the assumption arose because Albertson provided no evidence that the photographs, which were taken on the day of the preliminary hearing, showed Albertson's property in the same condition it was in on the

[4] No Trespassing signs do not ward off unwanted visitors like garlic wards off Bram Stoker's vampires. See United States v. Carloss, 818 F.3d 988, 995 (10th Cir. 2016) ("Such signs, by themselves, do not have the talismanic quality Carloss attributes to them."). It is the "message" *communicated* by the sign, not the sign itself, that can—in the right circumstances—revoke the implied invitation. Christensen, 131 Idaho at 147, 953 P.2d at 587.

day he was arrested. (Tr., p.43, Ls.2-17.) When Captain Kindig was shown a photograph at the hearing on the motion to suppress and asked whether there were "any significant differences between that photograph and the way the property looked on the 10th," he testified: "I don't remember the trees being trimmed [like they are in the photograph], but maybe they were." (Tr., p.43, Ls.19-25.) Given that the trees were adjacent to the No Trespassing sign and Captain Kindig's testimony that he did not see the No Trespassing sign on the day he arrested Albertson, the evidence was unclear as to whether the No Trespassing sign was visible *at all* when Captain Kindig arrested Albertson. (See Defense Exhibit A.) Rather than resolve the issue, the district court simply "*assume[d]* that the sign was there on the date of the search and that Captain Kindig could have seen it." (R., p.53 (emphasis added).)

This Court owes no deference to the district court's assumption. See State v. Pachosa, 160 Idaho 35, 38, 368 P.3d 655, 658 (2016) ("[T]his Court defers to the district court's *findings of fact* unless the findings are clearly erroneous." (emphasis added)). More to the point, the district court did not assume (or find) that the sign was in good condition or clearly legible (see R., p.53 ("[I]t is not the most prominent or noticeable sign.")), which would have been clearly erroneous anyway, see State v. Kinser, 141 Idaho 557, 560, 112 P.3d 845, 848 (Ct. App. 2005) ("Findings are clearly erroneous only when unsupported by substantial and competent evidence."). Albertson's photographs and Captain Kindig's testimony—the only evidence on the condition of the sign—show that the No Trespassing

sign was "black and faded out" and that "you've got to get pretty close to see those letters."[5] (Tr., p.40, L.23 – p.41, L.3; p.45, Ls.7-11; see Defense Exhibit A; Defense Exhibit B.)

Albertson argues that the sign alone was sufficient because the Idaho Legislature has proscribed entering without permission onto property "'posted with 'No Trespassing' signs.'" (Appellant's brief, p.6 (quoting I.C. § 18-7008(A)(9)(a) (2016)).) His suggestion that Captain Kindig could be prosecuted for trespassing is belied by the text of the statute in effect on August 10, 2016, which proscribed entering property posted with *multiple* "'No Trespassing' *signs*." I.C. § 18-7008(A)(9)(a) (2016) (emphasis added). Moreover, as the revised law passed in 2018 reveals, the No Trespassing signs must be "conspicuous." I.C. § 18-7008(A)(9)(a) (2018). Albertson's "faded out" sign with letters that "you've got to get pretty close to see" was not conspicuous. (Tr., p.40, L.23 – p.41, L.3; p.45, Ls.7-11); see Conspicuous, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/conspicuous (last visited Aug. 10, 2018) (defining "conspicuous" as "obvious to the eye or mind"). In any event, state law does not define the contours of the Fourth Amendment. See, e.g., Virginia v. Moore, 553 U.S. 164, 177-78 (2008) (finding an arrest constitutionally reasonable despite Virginia law not allowing the arrest).

Albertson also argues that the sign alone is sufficient because, in his view, Christensen turned more on the presence of the No Trespassing sign than on the presence of the gate. (Appellant's brief, p.6.) He cites a long passage from Christensen about the absence of a fence not being a dispositive factor to support his reading. (Appellant's brief, p.6.) But the passage Albertson relies on is about a *fence* around the property, which the

[5] Captain Kindig did not see the sign on the day he arrested Albertson. (Tr., p.45, Ls.12-16.) His testimony regarding the condition of the sign was based on his in-person observations of the sign made "a week later." (Id.)

defendant did not have, as opposed to a *gate* blocking access to the walkway, which the defendant did have. Christensen, 131 Idaho at 147, 953 P.2d at 587. The Christensen court made clear that the "unambiguous message" in that case came from the fact that "[t]he no trespassing sign was clearly posted on a gate across the only public access to the property." Id. Thus, as Albertson seems to concede later in his brief, the result in Christensen turned on the *combination* of the sign and the gate. (See Appellant's brief, p.11 (suggesting effect of No Trespassing sign alone may be an open question in Idaho "[s]ince *Christensen* dealt with a sign and a closed gate").)

Pointing to a dissent in the Tenth Circuit, Albertson asks this Court to adopt a bright-line rule that the Tenth Circuit rejected. (Appellant's brief, p.11.) Specifically, he wants this Court to "hold[] that 'plain, simple, appropriately displayed No Trespassing signs' are sufficient to revoke the implied invitation." (Appellant's brief, p.11 (quoting United States v. Carloss, 818 F.3d 988, 1014 (10th Cir. 2016) (Gorsuch, J., dissenting)).) But adopting that rule would be inconsistent with Christensen. The Christensen court explained that whether the implied invitation has been revoked does not turn on "bright line rule[s]" but is a fact-intensive inquiry that "requires a case by case determination." 131 Idaho at 148, 953 P.2d at 588.

Christensen's implicit rejection of Albertson's proposed rule puts Idaho in good (and crowded) company. See, e.g., Carloss, 818 F.3d at 995 ("[J]ust the presence of a 'No Trespassing' sign is not alone sufficient to convey to an objective officer, or member of the public, that he cannot go to the front door and knock."); Bleavins v. Bartels, 422 F.3d 445, 454 (7th Cir. 2005) ("A gate may manifest an expectation of privacy because it prevents access to a driveway by the public; a sign alone does not."); Jones v. State, 943

A.2d 1, 12 (Md. Ct. App. 2008) ("For Fourth Amendment purposes, appellant could not have had a reasonable expectation that the 'No Trespassing' sign would or should prevent visitors with a legitimate purpose from walking to the front door, including police officers in furtherance of an investigation."); Burdyshaw v. State, 10 S.W.3d 918, 921 (Ark. Ct. App. 2000) ("[E]ven though the property was posted, the gates were open, the driveway was not blocked, and the entry onto the property was not an intrusion prohibited by the Fourth Amendment."); Michel v. State, 961 P.2d 436, 438 (Alaska Ct. App. 1998) ("Persons visiting the residence for social or commercial purposes would not construe those signs as meant to prohibit their entry."); Davis v. City of Milwaukee, No. 13-CV-982-JPS, 2015 WL 5010459, at *13 (E.D. Wis. Aug. 21, 2015) ("[S]igns stating 'Private Property' or 'No Trespassing' do not, by themselves, create an impenetrable privacy zone."); United States v. Jones, No. 4:13cr00011-003, 2013 WL 4678229, at *5 (W.D. Va. Aug. 30, 2013) ("[S]uch signs do not, in and of themselves, create a right to privacy or automatically place an area under the Fourth Amendment's protections.").

Albertson's "split of authority" on this issue is, for the most part, illusory. (Appellant's brief, p.11.) The primary opinion on which he relies is the dissent in Carloss (Appellant's brief, pp.11-17), which is not authoritative, see, e.g., State v. Besaw, 155 Idaho 134, 144, 306 P.3d 219, 229 (Ct. App. 2013) ("It is problematical for Besaw's argument that the analysis . . . upon which he relies was in a *dissent*." (emphasis in original)). He also cites State v. Christensen, 517 S.W.3d 60 (Tenn. 2017), in which the Tennessee Supreme Court "agree[d] with the overwhelming majority of jurisdictions that have addressed the issue that signs admonishing 'No Trespassing,' in and of themselves, are rarely going to be sufficient to revoke the implied license." 517 S.W.3d at 75-76. The

other two cases he cites were not "knock and talk" cases at all, and neither case held that a No Trespassing sign, standing alone, was dispositive of anything. See People v. Stork, 561 N.E.2d 419, 421 (Ill. Ct. App. 1990) (holding defendant's backyard was part of curtilage based on four-factor curtilage test, relying on presence of No Trespassing sign as one fact in its analysis); State v. Kochel, 744 N.W.2d 771, 774-75 (N.D. 2008) (holding officers violated Fourth Amendment when they entered and searched addition to defendant's home because it was part of his house under Fourth Amendment, relying on multiple facts including the presence of a No Trespassing sign).

Albertson also relies on "collect[ed] cases" from other sources without citing the underlying cases themselves. (Appellant's brief, pp.11, 13.) The state sees no reason to distinguish or explain cases that Albertson failed to cite in his opening brief. See I.A.R. 35 (stating the argument section of a brief "shall contain . . . citations to the authorities . . . relied upon"). Suffice it to say, not all of the underlying cases support Albertson's proposed bright-line rule. See, e.g., State v. Roubique, 421 So.2d 859, 862 (La. 1982) (holding defendant had a reasonable expectation of privacy in his driveway based on a No Trespassing sign *and* the facts that his "trailer was isolated, barely visible from the road, and no other vehicle could be seen"); United States v. Clarkson, 2015 WL 328350, at *4 (E.D. Tenn. Jan. 26, 2015) (holding "[p]olice were well within Fourth Amendment boundaries when they walked down the long dock past several other moored boats to reach the defendant's houseboat and knocked on the window while standing on the dock" where defendant had *not* posted No Trespassing signs).

In all events, for purposes of this case, the question of whether to adopt Albertson's frequently-rejected rule is purely academic. Albertson did not revoke the implied invitation

even under his own rule. His No Trespassing sign was neither "plain" nor "appropriately displayed." Carloss, 818 F.3d at 1014 (Gorsuch, J., dissenting); see Plain, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/plain (last accessed August 8, 2018) (defining plain as "free of extraneous matter" or "free of impediments to view"); Appropriate, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/appropriately (last accessed August 8, 2018) (defining appropriate as "especially suitable"). His sign was "on a pole on the corner of the property" (R., p.51; see Defense Exhibit A), "black and faded out" with letters that "you've got to get pretty close to see" (Tr., p.40, L.23 – p.41, L.3; p.45, Ls.7-11), and facing away from the trees and canal rather than away from the house or access route to the house (see Defense Exhibit B). No case, even on Albertson's side of the so-called split of authority, suggests that a faded, difficult-to-read No Trespassing sign posted on the corner of the property and facing a direction that sends, at best, an ambiguous message could, by itself, revoke the implied invitation.

In sum, Captain Kindig approached Albertson's front door like any other social visitor would have done. (Tr., p.38, L.12 – p.40, L.12.) As he approached, he viewed Albertson smoking methamphetamine. (Tr., p.39, L.22 – p.40, L.3.) That observation was made from a public location because the public, including police officers, have an implied invitation to approach a front door and knock, see Clark, 124 Idaho at 313, 859 P.2d at 349; Jardines, 569 U.S. at 8, and Albertson had not revoked that implied invitation by sending an unambiguous message that visitors were not welcome, see Howard, 155 Idaho at 672, 315 P.3d at 860. Thus, the district court properly found that Captain Kindig's observation

did not constitute a search under the Fourth Amendment. See Christensen, 131 Idaho at 146, 953 P.2d at 586.

CONCLUSION

The state respectfully requests this Court affirm the Judgment of Conviction and Order entered by the district court after Albertson entered a conditional Alford plea to possession of a controlled substance, methamphetamine.

DATED this 22nd day of August, 2018.

/s/ Jeff Nye
JEFF NYE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of August, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Jeff Nye
JEFF NYE
Deputy Attorney General

JN/dd